

GOVERNOR'S CONSUMER ENERGY PROTECTION TASK FORCE

Minutes of the Meeting September 12, 2003 Room 102, State Capitol Building Helena, Montana

ROLL CALL: The September 12, 2003, meeting of the Governor's Consumer Energy Protection Task Force was called to order by Chairman John Hines at 9:10 a.m., in Room 102, State Capitol Building, Helena, Montana. Members present were John Hines, Chairman, Commissioner Rob Rowe, Haley Beaudry, David Wheeliham, Chuck Swysgood, Tom Power, Bill Drummond, Mike Uda, and Representative Alan Olson. John Alke was absent, and John Bushnell staffed the meeting.

Welcome and Introduction

Chairman Hines reminded the Task Force and members of the audience that the meeting was being televised. In addition, Chairman Hines reminded members of the audience to sign in and provide their e-mail address if they would like to receive notices of future meetings and agendas. Chairman Hines thanked Commissioner Rowe for the Public Service Commission's (PSC) help in circulating and posting information on its web site.

• Future Meeting Dates

The next scheduled meeting for the Task Force will be September 26, 2003. Mr. Mike Uda expressed his preference for the Task Force to meet more often than every two weeks. Tentative dates for Task Force meetings were set for October 10, October 24, and November 7.

Commissioner Bob Rowe distributed a pamphlet explaining the winter shut-off moratorium (Exhibit 1). In addition, Commissioner Rowe looked at what happened with the MDU system during the last natural gas price spike and determined there was a small increase in the number of requests for shutoff. Unfortunately, data was not available on the number of inquiries made that were resolved simply by providing information.

Chairman Hines reported that since the last Task Force meeting, he spoke with the Department of Environmental Quality (DEQ), and they have agreed to undertake an analysis of the cost effectiveness of the Energy Codes. This analysis will be fuel blind, but they would also be willing to do a sensitivity analysis between the separate fuels if that is what the Task Force would like. Mr. Bill Drummond thought an analysis should be done for all fuels.

Chairman Hines informed the Task Force that Governor Martz sent a letter to the PSC and Northwestern Energy (NWE) asking them to implement the recommendation of the Task Force directing approximately \$1.7 million be reallocated from the NWE USB funds to the low-

income programs. NWE was requested to work on an allocation formula setting forth how those dollars should be spent within the low-income programs.

The low-income subcommittee was charged with developing a standard to meet with a funding mechanism and determine if there is a funding gap between that standard and the available low-income dollars. Finally, the subcommittee was charged with identifying options for filling the gap. Chairman Hines thanked the subcommittee members for their work.

Report of Subcommittee on Low-Income Issues

Mr. John Bushnell reported that Mr. Tom Power gave a recap of the USB Advisory Committee's recommendations to NWE. None of the USB Advisory Committee members objected to the reallocation of the \$1.725 million in unassigned funds to low-income needs if NWE followed its proposed reallocation. The USB Advisory Committee recommended \$425,000 for low-income weatherization projects to be completed by the end of February, with unspent funds from the allocation going to Energy Share. The USB Advisory Committee recommended \$300,000 go directly to Energy Share, and the remaining \$998,000 go to NWE's low-income bill discount. Any industrial contributions that would revert to NWE would be allocated to Energy Share. Mr. Bushnell stated NWE's representative, Mr. John Fitzpatrick, also attended this meeting and had relayed NWE was flexible and could live within the recommendation.

The subcommittee adopted the recommended allocation proposed by Mr. Chuck Swysgood as a recommendation to bring back to the full Task Force. This allocation included \$100,000 to low-income weatherization projects, \$325,000 to Energy Share, and the remaining approximately \$1.3 million be allocated to the low-income bill discount. Industrial contributions reverting to NWE would be reallocated according to the normal course of business which, in the past, has been partially to Energy Share and partially to weatherization.

The subcommittee also looked at the standard to measure low-income needs and, given that standard, what the monetary need for the upcoming heating season would be. The subcommittee identified the funding gap and the possible sources for filling the gap. The subcommittee identified available federal funding to the state as the most likely source of funds for filling the gap and the most likely program for targeting those funds would be LIEAP. Discussion was held among the subcommittee as to whether LIEAP would be able to receive funds through budget amendment. The subcommittee decided to use Mr. Nolan's analysis from the previous meeting and recognized a 14 percent increase in LIEAP-qualified households and the projected energy bills for this year would leave a projected \$7.8 million funding gap. The standard would be to leave bills unchanged from the prior heating season.

Chairman Hines asked for clarification and restated the standard would be that after additional payments come in, a qualifying low-income consumer would not be paying any more out-of-pocket expenses for energy costs. Mr. Bushnell confirmed they would not be paying any more out-of-pocket expenses than the prior heating season.

Mr. Bushnell continued by stating \$7.8 million, less NWE's identified \$1.725 million, will leave a statewide funding gap of approximately \$6.1 million.

The subcommittee made a "soft" recommendation that the Office of Budget and Programming investigate whether any state low-income program is available to receive federal funds through a budget amendment process. If there is a state agency that is capable of receiving federal funds, the Governor should consider using a portion of the federal monies to help meet a portion of that need.

Chairman Hines reminded the Task Force that the intent was to encompass all of the ratepayers in Montana, not just the NWE portion. Therefore, the \$6.1 million funding gap addresses the MDU service territory, as well as co-op service territories.

Mr. Mike Uda stated that during the subcommittee meeting, they did not have figures for Great Falls Gas or Energy West Resources. Therefore, the subcommittee did not know what the unmet need would be. In part, this is why the subcommittee's recommendation is "soft." Mr. Uda felt that while these costs are probably not huge in relation to the overall need, they would not be insignificant.

Chairman Hines informed Mr. Jim Nolan that it was his understanding the statewide numbers would address everyone in the state, even though it could not be broken out by service territory. Mr. Nolan confirmed that was correct and replied they did a breakout for NWE and then a breakout for the state as a whole. Mr. Nolan stated they could go back and do a breakout for NWE and MDU. Chairman Hines wondered if the \$6.1 million funding gap would include all customers. Mr. Nolan confirmed it included everyone.

Development of Recommendations on Low-Income Funding and Allocations

- **Task Force Discussion**

Mr. Uda stated the subcommittee members were comfortable with attempting to plug the gap identified by Jim Nolan. The subcommittee members felt attempting to hold consumers harmless was a good goal, but admitted they did not know how accurate the projections are and could be over or under estimating the need.

Mr. Swysgood noted there has to be a state program in place which does similar work and that was approved by the Legislature as a funding mechanism before they can apply the budget amendment process to federal funds. Mr. Swysgood stated the various programs within the agencies have not yet been reviewed and this needs to be done.

Mr. Tom Power recalled the subcommittee making a "soft" recommendation because the demands for federal funds have increased significantly as a result of fire-fighting costs. The likelihood of using those funds to close the gap entirely is not very high. Mr. Power emphasized the subcommittee did not discuss whether those sources of funds should be used to close the entire gap. The low-income community is well aware of the fact that there are competing low-income interests in how the funds are spent. Mr. Power felt the Administration, as well as the Task Force, would want to investigate whether low-income bill assistance is the highest priority from the low-income community's point of view. Mr. Power did not recall that the subcommittee made the recommendation that the entire gap be closed using those funds.

Mr. Swysgood stated he believed the recommendation was that the Governor use a portion of the funds to satisfy a portion of the gap. Mr. Swysgood added that while there are a lot of competing needs, the Administration is reluctant to increase funding for programs that are on-going with money that would be disappearing rather fast. Rather, the administration considers applying funds on a one-time basis.

Chairman Hines stated there is a definite problem this year with the spike in natural gas, but the second issue is how to address the long-term issue of assuring a viable and affordable energy structure in the future. Chairman Hines wondered if the subcommittee looked at additional or alternative funding mechanisms. Mr. Bushnell responded only to the extent that Mr. Nolan had identified a pool of money from oil overcharges, but stated that money cannot be tapped right now. Mr. Nolan informed the Task Force that in 1987 the Legislature looked at oil overcharge monies and set aside a portion into the Energy Conservation Account. Currently, there is \$1.3 in the Energy Conservation Account which is earmarked for low-income weatherization or fuel bill assistance. However, Legislative authority is needed to access money in that account.

Commissioner Rowe added these were one-time funds and there was a flexible plan put in place to use those over the long term to fill in holes that were pretty clearly recognized in weatherization and energy assistance. Mr. Nolan agreed stating the Legislature recognized the tentative nature of funding for LIEAP and weatherization. Mr. Nolan referred to the Energy Conservation Account as a "Coal Trust Tax Fund," and stated it is money set aside for a rainy day when LIEAP and the weatherization program are in jeopardy.

Dave Wheeliham asked the subcommittee members what factors it used to arrive at their recommendation of \$100,000 to low-income weatherization and \$325,000 to Energy Share, and \$1.2 million to low-income bill discounts. Mr. Swysgood noted that Mr. Power was not in agreement with the rest of the subcommittee. There was a lot of discussion among the subcommittee relating to the charge of the Task Force and the need for immediate assistance. The subcommittee was not looking at the long-term. This late in the season, it was felt that while weatherization is a long-term fix to energy problems, it may not be feasible to accomplish much weatherization in the remaining short period of time. Therefore, the subcommittee elected to look at the immediate needs of low-income. Therefore, they wanted to try to make available as much of the \$1.75 million as they could. Mr. Swysgood thought \$100,000 seemed more realistic of what could be used in the short-time period before bad weather. Mr. Uda added there was no magic to the \$100,000 figure.

Mr. Bill Drummond inquired if the Task Force could get an idea of whether the existing weatherization infrastructure could handle \$100,000. Mr. Uda replied that they made that inquiry and found most of the money would be allocated as a budgetary matter prior to December 15, but much of it would not come into play and benefit people until next year. Given the impending crises with natural gas prices, Mr. Uda thought it was more appropriate to direct some of that money to bill assistance to get the money more immediately into the hands of people who need it the most.

Mr. Power suggested next year means January 1, 2004, and stated it is true that between now and the end of the budget year for this year, December 15, only weatherization that has been completed by December 15 will get counted as having been done this year. Therefore, in that context, there is a limited amount of additional money that can be spent. The proposal that came from NWE USB Advisory Committee was not focused on the December 15 cutoff. Rather, that proposal was to spend the \$425,000 by the end of February, and that the accounting rules be changed so the spending of the money could be utilized on this coming heating season rather than the pre-December 15 period. Mr. Power understood the money could be effectively spent by the end of February 2004.

Commissioner Rowe stated he would like to hear what could be spent this heating season in a way that would be aggressively cost effective.

Chairman Hines pointed out that even low income bill assistance money would move into 2004.

Jim Morton, representing District 11 Human Resource Council, stated the Human Resource Development Council (HRDC) Directors' Association met and took the position that it could spend up to the \$425,000 by February 25 if some of the accounting rules were changed.

These are NWE's rules and if a unit is not completed and the appropriate sign offs obtained, the expense is carried forward into the next year.

Chairman Hines stated given NWE's financial condition, he feels the money should be allocated into some sort of fund where it can be available for either weatherization or bill assistance.

Commissioner Rowe stated the PSC's order is now in effect and the question should go to NWE as to what steps it has taken to comply. Glen Phelps, representing Northwestern Energy, testified that historically they have required HRDCs to have a home completed and signed off before they invoice NWE for the project. Chairman Hines clarified that HRDCs carry the cost until NWE signs off, with the understanding the money is available upon completion.

Mr. Dennis Lopach, representing Northwestern Energy, stated that with regard to the USB segregation and the PSC order, NWE filed an objection to the order, citing that in certain circumstances the funds would be deficit, which could impact delivery of services. Mr. Lopach referred to this as a working capital issue and suggested the PSC take that consideration into account. Mr. Lopach wondered if the Task Force had discussed the situation with the Pacific Gas and Electric (PGE) bankruptcy and the timing of PGE's request to the bankruptcy court to determine those funds are not part of the bankruptcy estate. Mr. Lopach understood PGE did not file that request until the 45th day and, if they had filed it timely, the issue could have been dealt with in a much more immediate and direct way.

Chairman Hines understood the judge eventually separated the funds, but that it took a couple of months. Mr. Lopach agreed, but stated it was because the issue was not dealt with at the time of the filing.

Mr. Wheeliham asked for further explanation about the funds being in deficit at certain times. Mr. Lopach responded he has not looked at the cash-flow projections, and the document noted out-flows at times exceed in-flows. Mr. Lopach has heard a great deal of the USB expenditures are weighted toward the last quarter, whereas collections would tend to be ongoing throughout the year. Mr. Wheeliham recognized these were unassigned funds carried over from previous years and was curious why it would be deficit. Mr. Lopach understood, but stated this would be addressing the program on a going-forward basis and presumably after the funds had been expended.

(Tape 1; Side B)

Commissioner Rowe indicated to Jim Morton that his concern was that the money be spent as cost effective as possible. Commissioner Rowe asked Mr. Morton what the cost-

effectiveness standard is that they expect to meet. Mr. Morton responded it currently is \$1.8. Therefore, every \$1 generates \$1.8 in savings. Commissioner Rowe wondered if this estimate was on units identified in need of weatherization. Mr. Morton replied it was. Commissioner Rowe then asked about mobile homes and whether they had discussed ways to deal with that issue. Mr. Morton replied those discussions have been ongoing. Mr. Morton congratulated Governor Martz for asking the Task Force to consider long-range goals such as conservation. Mr. Morton felt looking at the long-range is the exciting part of Governor Martz's charge. In the short-term, mobile homes will be addressed because of the prioritization on waiting lists, and older mobile homes use more energy and, therefore, come to the top of the list.

Mr. Swysgood asked how much of the current allocation of weatherization money had been committed and what the expected due dates are. Mr. Morton replied they have three due dates, including NWE's December 15 deadline. March 31 and June 30 are deadlines for funding the HRDCs receive from the Department of Health and Human Services (DPHHS). Mr. Swysgood asked how additional money they receive for weatherization would factor in. Mr. Morton replied each agency would look at their own budgets and waiting lists. He felt they would try to ramp up through June 30 if more money was available.

Mr. Haley Beaudry stated the \$1.8 to \$1 payoff is over a period of time and \$1.8 is an overall program average and there should be some ranges, and that some programs would have a higher payoff. Mr. Morton replied that if the payoff were only going to be \$1.6, they would give the option to the homeowner to come up with the difference. If the savings does not meet the \$1.8 they do not undertake the project. Health and safety are not required to meet the \$1.8. Mr. Beaudry thought since mobile homes receive priority, they must have a higher ratio of payback. Mr. Morton understood prioritization is based on the estimated fuel usage of each home type with the type of fuel factored in. Mr. Beaudry stated some homes that receive priority have huge payback ratios. Mr. Morton agreed and added some others are large consumers but do not meet the \$1.8 because they cannot undertake major rehabs. For example, they would not blow in insulation if the roof was so faulty it would destroy the insulation.

Commissioner Rowe stated the payback assessment is not on average, but rather measure-for-measure. Mr. Morton replied affirmatively.

Chairman Hines felt in looking at the funding allocation, it is critical whether there is going to be additional money available. If the federal funds or oil overcharge funds are available, it will change the reallocation picture. Mr. Uda and Mr. Swysgood agreed the availability of other funds was not discussed by the subcommittee. The basis was the immediate problem and how that problem could be impacted as rapidly as possible with what is available now. Mr. Swysgood reminded the Task Force that they do not know whether any federal funds will be available. The subcommittee was attempting to address the immediate problem of higher gas

prices to as great an extent as possible, recognizing that all the other components are as equally important. The subcommittee weighed on the side of the immediate problem.

Mr. Power agreed there are important issues of equity across the state, and the most immediate one for receiving funds if federal funds are available for low-income programs, was LIEAP, and it was not clear whether they could receive funds through the budget amendment process. If they were eligible, the money would go to bill assistance through the LIEAP process. In that sense, there would be more money available for bill assistance, if the money were available and if it could be worked out. Because of all the "ifs" involved, the Advisory Committee did not really address this issue.

Chairman Hines stated his concern is in the worst-case scenario, and that there would not be any federal funds available, and the oil over charge dollars would be inaccessible, creating a significant gap between the no-net-impact standard for this year and the reality. Chairman Hines asked Mr. Nolan if the worst-case scenario were the reality, how many households he estimated would be affected if it all went into bill assistance to meet the no-net-impact standard versus how many households could be weatherized. Mr. Nolan responded the rule of thumb is the average LIEAP benefit is in the neighborhood of \$300 to \$400. The average cost to weatherize a home is about \$3,000. Therefore, for every home they weatherize, they could provide LIEAP assistance to approximately ten households.

Chairman Hines asked Mr. Power if he thought this information would change the Advisory Committee's recommendation if there was not going to be any additional dollars available. Mr. Power replied it would not, and that they had a long and extended discussion and voted the opposite way of the subcommittee. The reason the Advisory Committee voted the way they did was because Mr. Power pointed out that it is rare one public policy objective trumps completely all other policy objectives. There are a lot of people competing for federal funds, and there is no way they will all go to low-income items. The Advisory Committee reasoned that there are competing objectives and good programs, and that when you can kill two birds with one stone by continuing to work on long-term solutions while also granting some relief during the coming heating season, you should not abandon all other programs and focus on one. Mr. Power suggested putting everything into one program and nothing into another program is rarely the wise public-policy solution.

Chairman Hines noted there is a \$300,000 differential between proposed weatherization from the Advisory Committee and the subcommittee's proposal. If all of the difference were put into low-income bill assistance, using Mr. Nolan's number, it could help 1,000 additional households or weatherize 100 households.

Mr. Power stated over the last decade, a consensus has emerged that in helping low-income households, they should not focus only on the short-term problem by giving money away. Rather, focus should be on long-term solutions such as earning ability, access to jobs, access to childcare. Mr. Power stated there has been bipartisan consensus that permanent solutions are the smart direction. This was part of the logic behind maintaining the low-income weatherization program. High energy prices have been with us for a while and are likely to continue. For this reason, Mr. Power feels programs should be maintained that aim toward longer-term solutions.

Commissioner Rowe added that both groups' recommendations appropriately recommend increased funding for existing programs in an attempt to achieve the same objectives. How the programs are weighted depends on whether the problem is viewed as a one-year problem or an ongoing problem. Commissioner Rowe's sense is that even though gas prices will moderate, this is not a problem for only this year, but a problem that will reoccur. Commissioner Rowe felt weatherization is important. Commissioner Rowe would like to see a recommendation with a broad support base, so when the recommendation comes to the PSC, they are able to act on it similar to the way the PSC acted on segregated USB funds. Commissioner Rowe felt it would be appropriate to have a filing with the PSC which focuses on the unallocated funds and is explicitly limited to this year, and recognizes LIEAP and weatherization are both important tools. In addition, he felt the filing should try to resolve the difference between the \$100,000 and \$425,000 suggested funding levels.

Mr. Swysgood stated the cold facts are they might only have \$1.75 million to address the situation, and the question is how do you make that money help as many people as possible in the face of rising energy costs. Mr. Swysgood calculated if you take the estimated average increase of the bill, approximately \$233, and divide it into the amount of money available right now, you could help 5,500 households. If you cut that amount back to the \$998,000 proposed by the Advisory Council, then you can only help 4,200 households. In the same sense, \$425,000 for weatherization will allow for weatherization of only 140 homes. Mr. Swysgood was using the scenario of that being the only money available. Mr. Swysgood felt more money placed in bill assistance will help the most people, although he admitted weatherization is a long-term program and a good program.

Rep. Alan Olson's understanding of USB from the onset was to help low-income people. He also felt weatherization is a good program with long-term benefits, but the problem is now and the Task Force should focus on helping the most people. Rep. Olson asked that weatherization stay on the table. Rep. Olson remembered that in the 2001 Session, legislators were given a presentation on renewables that were paid for by USB. Rep. Olson noted none of the renewables were attached to low-income housing. Rather, they were attached to housing owned by individuals who could probably pay for it themselves. In order to help low-income and get the most bang for the buck, the Task Force should concentrate on bill discount. Putting another

\$100,000 into weatherization would at least result in \$100,000 more than was previously available. Rep. Olson suggested looking at reallocating some of the money down the road, and thought the USB Advisory Committee should take a look at that option. Money would be better spent in weatherization at this time than \$1.45 million going into renewable generation. Rep. Olson clarified saying not all of that money had to come from renewable generation. Rep. Olson thought the Task Force should worry about the problem facing it today, with the money available today, and worry about the long term when the short term is taken care of.

Mr. Power stated that sort of reasoning to solve the short-term problem before focusing on the long-term problem and the modest emphasis on renewable resources is that the nation and state is highly vulnerable because of its dependence on particular fuel sources which led to enormous expenditures to protect our energy security. Renewable and energy efficiency investments are aimed at making a modest attempt to solve some of those energy security problems. To give up on the long-term problems because this year we have high energy prices when, in fact, those prices will be here indefinitely and into the future, would be short sided, and low-income houses will have problems meeting their energy bills every year. Mr. Power thought the problem should be attacked on multiple fronts, and he was not clear of the impacts on the budgetary process to do otherwise.

Mr. Drummond responded if getting bang for the buck was the goal, building codes should be changed. Mr. Drummond stated his decision would be formed by the degree to which access could be gained to federal funds. He is much more comfortable recommending more money go to weatherization. Mr. Drummond understood approximately \$300-\$400 per family is provided in bill assistance from LIEAP. Mr. Drummond opined that over the heating season, the two alternatives are not that far apart.

Mr. Uda questioned Commissioner Rowe regarding his concern that if there was broad support from this group, it would reduce the opposition the PSC might receive in implementing the Task Force's recommendation. Commissioner Rowe verified he felt that was true. Mr. Uda asked if Commissioner Rowe was in favor of a compromise solution between the USB Advisory Committee's recommendation and the subcommittee's recommendation. Commissioner Rowe agreed, stating not just because of NWE's financial situation, but also because they need to give certainty to all three of the programs in making plans to expend the money. To the degree a recommendation comes in to the PSC that is very focused and broadly supported, the PSC will be able to act quickly.

Chairman Hines stated he was disturbed by something he heard, which is NWE does not seem to have the \$1.75 million available, and charged that raises serious issues. He explained his understanding that this money is carryover dollars from previous years that were not allocated.

To now find the money is not available, would raise significant concerns. Chairman Hines asked for clarity from Mr. Lopach as to whether the money was available.

Mr. Lopach responded there is no bank account labeled "USB kitty." There is, however, substantial cash flow in the utility business. Mr. Lopach addressed the discussion about the potential bankruptcy of NWE and the motion to treat these funds as not belonging to the bankruptcy estate, but rather to be administered in constructive trust. The beneficiaries of the program would recognize a portion of the cash flow belongs to the programs. Therefore, Mr. Lopach did not believe there was an issue surrounding the availability of cash.

Mr. Uda agreed, and defined his understanding was that it was basically an accounting treatment. Chairman Hines stated the point as being there is not a separate account that clearly identifies USB funds. Mr. Lopach stated there is not a separate bank account, but there is ample cash flow.

Mr. Beaudry's understanding was the Task Force was created to address an emergency situation and the impending train wreck. He does not believe reallocation of the money based on different view of the same program is what the Task Force should be about, but rather how to get people through the winter who may not otherwise make it. Mr. Beaudry agreed it is extremely important not to let ships rust, but there comes a time when you have to put the paintbrush down and start bailing or manning the lifeboats. Mr. Beaudry's viewpoint is the allocation to long-term solutions should be zero until the state gets past the current emergency. Mr. Power suggested it might be a wise move to plug the leak rather than bail.

Mr. Patrick Judge, Energy Policy Director, Montana Environmental Information Center (MEIC) and a member of the USB Coalition Group, stated the Coalition reviewed NWE's proposal and the Advisory Committee's response, as well as the Task Force subcommittee's response. The Coalition commented that they were disappointed in the manner in which NWE made its proposal since the Advisory Committee is the proper forum for developing that type of recommendation. Mr. Judge submitted written testimony to the Task Force (Exhibit 2).

(Tape 2; Side A)

Commissioner Rowe questioned Mr. Judge as to whether he was a member of the Default Portfolio Advisory Committee. Mr. Judge responded he is. Commissioner Rowe asked Mr. Judge if he would consider, long-term, if it were appropriate for the USB Advisory Committee and the Default Supply Advisory Committee to look at the relationship between Renewables and the Portfolio as it is developed. Mr. Judge replied absolutely, and the two Advisory Committees should look at all USB programs, statutes, and rules, and those items should always be open for re-evaluation and discussion. Mr. Judge believed that if a significant portion of the state's

conservation objectives and potential can be acquired to default supply, it would be wonderful. Mr. Judge would like to see that happen before the USB is abandoned, which did have multiple public purposes identified from the start, including renewable energy and energy conservation. Mr. Judge liked the idea of universal system benefits referring to all utilities and all customers in the state. Mr. Judge would like to ensure goals for all customers throughout the state are not abandoned.

Commissioner Rowe asked about the relationship between renewables and low income and wondered if Mr. Judge thought that was appropriate for review by the Advisory Committee. Mr. Judge agreed it was and that there are numerous low-income renewable projects that have been completed and pointed out the largest USB-supported solar project in the state is at a low-income multi-family complex. Mr. Judge felt emphasis should be placed with projects that have the same objectives, in addition to more public renewable projects such as schools and firehalls.

Mr. Uda understood Mr. Judge's position to be that the Task Force should do nothing different from what the USB Advisory Committee has recommended to NWE. Mr. Judge agreed.

Ms. Mary Caferro, representing the Low-Income Coalition and Working for Equality and Economic Liberation (WEEL), supports the USB Advisory Committee recommendation. Ms. Caferro testified the missing piece of the puzzle is the low-income individual's perspective. Ms. Caferro felt everyone wants to help low-income households, but the question is how. Ms. Caferro expressed low-income households would be in the same position next year, but weatherization will enable those households to see a cost savings of 21 percent next year. Ms. Caferro reminded the Task Force that this is not a just a low-income issue, and USB was set up to help all Montanans. Ms. Caferro closed by stating weatherization will help to address poverty reduction.

Mr. Drummond asked Ms. Caferro if she were faced with the decision to either weatherize an additional 110 homes or helping 650 families what choice she would make. Ms. Caferro stated the 110 homes will be in a better position for years to come. Ms. Caferro stated people who live in homes in need of weatherization can spend \$200 per month to sit in a house the wind blows through. Ms. Caferro warned about being stuck in a handout-dependent mentality and claimed there needs to be a balance, and bill assistance is too short term. Ms. Caferro does not anticipate energy rates will come down or that income levels will go up.

Mr. Greg Groepper, representing Energy Share, provided the Task Force with an idea of the urgency needed for a decision. The allocation to Energy Share from NWE is at the level required by the PSC. Many Energy Share offices have decided not to open until October 1 in an effort to make this money last the entire year. If Energy Share receives a check tomorrow, they would be able to have the money in the field the same day. However, until Energy Share receives

a check, they will not be able to do anything. Mr. Groepper thought increasing the amount of benefit for LIEAP recipients will require action by the PSC, which will take time. Mr. Groepper urged that whatever the Task Force decides to do for weatherization or bill assistance, it be done immediately and without the need for a hearing.

Chairman Hines noted the Task Force's focus has been on the heating season and appreciated Mr. Groepper's concerns. Chairman Hines felt they have the same goals, but have different ideas with respect to timing.

Commissioner Rowe stated in looking at the two recommendations, the issue is not with the recommendations, but with the margins between the two.

Mr. Morton testified that when the HRDC directors went over the figures and recommendations of the USB Advisory Committee and the subcommittee of the Task Force, they had concerns about the effectiveness and efficiency of being able to get money out to non-LIEAP households in a short time period. Mr. Morton felt the Governor had given the Task Force a fantastic opportunity to address the problem in the long-range.

Mr. Drummond charged Mr. Morton with making the decision between weatherizing 110 homes or providing assistance to 650 people and wanted to know how he would choose. Mr. Morton replied, personally, the most effective efficient way to reach the most people is through bill discount.

Commissioner Tom Schneider, Montana Public Service Commission, commented it seems to him the Task Force was handed \$1.75 million it did not expect. Commissioner Schneider encouraged the Task Force to look at why it was given the \$1.75 million in terms of the way programs are funded and allocated and the way program commitments are made for each year. Commissioner Schneider felt the basic allocation scheme handed to the Task Force by NWE represented a mix and the three legs of the stool consisting of weatherization, Energy Share, and bill discount. Commissioner Schneider thought an easy way to get these things done would be for NWE to file a tariff for the discount at the level recommended by either the Advisory Committee or the Task Force and file an interim request. This would enable the PSC to act very quickly. Commissioner Schneider reminded the Task Force that the LIEAP discount is available to all qualified NWE customers. Commissioner Schneider felt the Task Force could make its recommendation, NWE could file papers on Monday, the interim rate could be put into effect and direction given to weatherization and cutting a check to Energy Share. Commissioner Schneider referred to the \$1.75 million as a "rabbit in a hat," and commended the Task Force for its work.

Mr. Swysgood moved the Task Force adopt the subcommittee's recommendation for distribution of the funds and make that recommendation to the Governor. The motion was seconded.

Mr. Uda informed the Task Force that he would be voting against the motion because he believed the short-term problem should be addressed first. Mr. Uda is concerned about having a lengthy process at the PSC and the ability of the PSC to act quickly. Mr. Uda proposed splitting the difference and putting \$200,000 into weatherization. Mr. Uda moved to amend Mr. Swysgood's motion by splitting the difference. The motion was seconded.

Commissioner Rowe stated it is very important a result be accomplished quickly and again noted the more support for the recommendation, the better.

Mr. Uda restated the motion to split the difference between the USB Advisory Committee recommendation to spend \$425,000 on low-income weatherization and the subcommittee's recommendation to spend \$100,000, which is a \$325,000 difference. The Task Force's intent was to split the difference in half between weatherization and bill assistance. Mr. Uda clarified his motion is contingent upon obtaining more federal funds. Mr. Uda's thought was the issue should be revisited if more federal funds become available. After seeing opposition from the Task Force, Mr. Uda changed his position, stating his motion was not contingent upon obtaining more federal funds.

Mr. Swysgood clarified that the motion was for the \$325,000 difference for weatherization and the \$25,000 difference in Energy Share allocations, and that those two differences would be equally divided.

Mr. Power informed the Task Force that as a member of the USB Advisory Committee, he would not be voting.

The amended motion carried with Mr. Beaudry voting in opposition and Commissioner Rowe and Mr. Power not voting.

Mr. Swysgood's original motion, as amended, carried with Commissioner Rowe and Mr. Power not voting.

Consumer Protection Issues Surrounding Northwestern's Finances

• **John Bushnell, NWPCC**

Chairman Hines reminded the Task Force of the Governor's charge to focus on whether the rules and statutes surrounding consumer protection are sufficient if NWE's financial condition deteriorates. Chairman Hines felt this has now occurred and spoke to NWE's deteriorating financial condition being evidenced by the fact it received notice this past week that it may be delisted off the New York Stock Exchange. The Governor's second charge to the Task Force was to examine how NWE customers can receive the most affordable supply in the long run. Chairman Hines felt this meant determining whether the structural aspect of the energy situation is sufficient or adequate and, if not, what changes should be recommended in the interest of consumer protection. Chairman Hines suggested the Task Force focus on critical aspects that the Task Force can add value to. Mr. Bushnell provided a potential preliminary outline of where the Task Force should go, and Chairman Hines reminded the Task Force the presentation was intended to facilitate conversation and input from Task Force members.

Mr. Bushnell gave a presentation to the Task Force (Exhibit 3) which outlined the three main issues as consumer protection issues surrounding NWE's financial condition as it deteriorates, consumer protection issues if bankruptcy occurs, and consumer protection issues after bankruptcy. In addressing pre-bankruptcy, Mr. Bushnell outlined power supply, maintenance, and quality of service as concerns.

Regarding power supply, Chairman Hines stated there is a critical juncture between the actual filing of bankruptcy and the point where power suppliers may not want to provide power absent a guarantee of payment or prepayment. Commissioner Rowe and Mr. Bushnell agreed with this concern.

Mr. Bushnell stated another area of interest is the Review of Emergency Powers and whether those powers are sufficient and, if necessary, how those powers could be changed. There is a question of how involved the state wants to be in procuring and backing energy supply. The PSC is working on portfolio development and investigating finances as requested by the Consumer Council. In addition, the PSC is tracking maintenance and system reliability. In the long term, Mr. Bushnell explained there is some question of clarifying authority for the PSC both in terms of affiliate interest transactions and transfer authority. Another issue is changing the role of the PSC from reactive to proactive.

Chairman Hines explained the utility is supposed to acquire resources and then come back to the PSC after contracts have been signed. Chairman Hines wondered if this would continue to be the procedure in the future.

Mr. Uda stated the fallout has been that formerly vertical utilities have ventured into the competitive arena. To some degree, the structure of the PSC was formulated and evolved in an era of vertically integrated utility regulation. As a result, the PSC has not been able to respond quickly to things such as rapidly changing market conditions and has to play "catch up." Mr. Uda stated in the past, the PSC has recruited members who are economists or have experience in the utility industry. Mr. Uda thought it may be more useful to consider people with a background in trading or financial instruments. In speaking to the reactive versus proactive model, Mr. Uda thought, in part, it is simply because that is the way it has always been done. Mr. Uda felt this might be limiting the PSC.

Commissioner Rowe explained that "reactive" refers to the contested case approach required under state law and by due process, and this is a very important tool. The arguments for the reactive model came from industry because they wanted to be able work things out in the market.

(Tape 2; Side B)

Commissioner Rowe noted Montana has a small population and, therefore, a small PSC. The PSC is constrained by small dollars for staff, consulting, and time. This affects what the PSC can do and how much it can do. It also affects the kind of people who can be hired into entry level positions, not unlike the problems experienced throughout state government. Commissioner Rowe felt it would be difficult to hire someone with a trading background to do market monitoring. Commissioner Rowe did not feel the PSC is entirely reactive and views the work the PSC has been doing as proactive. Commissioner Rowe cited work done on the guidelines, Rep. Olson's bill, and the advance approval bill as all being proactive. Ultimately, it is the Legislature who guides the PSC's direction. Commissioner Rowe felt the PSC had been very proactive, within its limited resources, in dealing with NWE's financial situation. Commissioner Rowe is very interested in implementing an Alternative Dispute Resolution Processes (ADR) in rulemaking, Legislative issues, and adjudication. Commissioner Rowe explained larger states that have used ADR have been more proactive.

Chairman Hines stated some of the issues are beyond Montana's borders, and the position the PSC will be taking is dependent on how the state decides on the structural situation. Therefore, there needs to be a liberal tie in.

Mr. Uda clarified that his comments were not intended to be a criticism of the PSC. Mr. Uda would like to hear from PSC staff as to things they feel could be improved. Commissioner Rowe responded he was glad for the open discussion.

Mr. Bushnell continued explaining that if bankruptcy does occur, they should identify which state agencies would be affected, what kind of seat those agencies would get at the table, and what the state's role should be as a creditor.

Chairman Hines stated one concern will be how to provide supply in the future and that this is definitely part of the state's interest. Chairman Hines warned the Task Force about exploding into an unmanageable number of issues that they really cannot impact upon. Mr. Bushnell concluded his presentation by identifying issues post-bankruptcy as being the structure of the utility and the role of the default supplier. Chairman Hines asked the Task Force members to contemplate the issues pointed out by Mr. Bushnell.

Commissioner Rowe asked if an implicit part of the structure of the utility would be what authority or ability the state has to say anything about the structure of the utility. Chairman Hines replied there are a lot of different aspects to structuring a utility. Part of it would be what the vision is and whether we would want a more vertically integrated utility or a utility with the ability to own generation.

The Task Force adjourned for lunch at 11:55 a.m. and reconvened at 1:00 p.m.

Pre-bankruptcy Consumer Protection Issues

- **System Reliability--Dave Gates**

Mr. Dave Gates, Vice President of Transmission, Northwestern Energy, submitted a copy of NWE's Maintenance Plan and Budget Compliance Report (Exhibit 4) and directed the Task Force to page 4 which depicts Distribution Reliability. Mr. Gates reviewed the power outages and explained the use of industry standard calculations for comparison. Mr. Gates noted that NWE is better than the industry standard and won the Reliability One Award in 2001. Mr. Gates explained 2002 was a difficult year because of lightening storms. The outage tables indicated an average customer would have a 97 percent chance of experiencing one outage during the year. Squirrels and other animals are causing an increasing amount of outages in Great Falls and Missoula. Equipment is a significant cause of outages in storm-related activities. Mr. Gates thanked Commissioner Rowe for the PSC's letter to NWE employees regarding their outstanding performance during the fire season. Mr. Gates felt there are consumer protections available as a matter of law. Mr. Gates explained the System Integrity Program and the internal method in place to ensure NWE is monitoring the system and spending the dollars it needs to operate and maintain a reliable electric and natural gas system.

Chairman Hines asked Mr. Gates about the reliability of the infrastructure and, in the event NWE files for bankruptcy and is unable to pay a supplier, whether people will still receive power.

Mr. Gates replied nothing would be altered with the ability to provide power, although he could not speak directly to supply contracts.

Chairman Hines asked if there was a single supplier who chose not to continue its contract, whether there would continue to be power. Mr. Gates replied if there was no supplier, NWE would still be able to rely on the interconnects of other suppliers within the state.

Mr. Power wondered if as NWE's financial situation deteriorates, whether there has been pressure on the transmission and distribution side to reduce expenditures. Mr. Gates has not experienced pressure to reduce expenditures. They have expended a capital expenditure program based on a priority system, and this has changed the way NWE spends dollars. This has improved the way they spend money to keep the system up and running and to maintain the system.

- **PSC Activities--Bob Rowe, Chairman, PSC**

Commissioner Rowe gave an overview of the financial concerns for the three time periods before, during, and after bankruptcy. The pre-bankruptcy period is important regardless of whether a bankruptcy occurs because of the financial vulnerability of NWE. Commissioner Rowe thought the issues could be divided into three different categories: maintenance of the physical assets, the ability to purchase energy (both gas and electricity), and financial issues. The PSC has taken a number of aggressive steps since the first of the year. In January, the PSC issued an order concerning NWE's request to secure financing. This spoke to the PSC's concern about physical assets. Commissioner Rowe asserted that while squirrels were a problem in Great Falls and Missoula, the tree trimming budget was also a concern expressed by the PSC. Commissioner Rowe submitted a PSC memo on the Monitoring of Northwestern Energy's Maintenance Practices and the Reliability Performance Measures (Exhibit 5). Commissioner Rowe felt it was accurate to say that the runup in natural gas prices, as well as the runup in electric prices, have not been exacerbated by NWE's financial situation. This does raise concerns about the ability to purchase energy. On the gas side, the PSC did a study on NWE Natural Gas Storage, and Commissioner Rowe presented the Task Force with the results of that study (Exhibit 6). Commissioner Rowe felt the period before a bankruptcy is the most uncertain period. This is the time when a supplier will perceive himself to be most at risk, and the supplier's own investors will have that same perception.

Chairman Hines remembered hearing that NWE's financial condition had affected its ability to contract with wind companies. Commissioner Rowe replied the PSC used a lot of resources to implement legislation during the past session. Ironically, the Montana approach to dealing with a provider of the last resort is being cited as a national model. Commissioner Rowe felt this reinforces the fact that good policies are in place. The concern lies with NWE's ability to enter into contracts with new sources of supply. During the last session, the perceived risk

expressed by the financial community was the regulatory risk that a new investment would not be approved and the risk would be associated with the company. On the distribution side, there has not been an increase in rates since NWE acquired the utility. The current rates were set in 2001 based on financial information from 1999. Commissioner Rowe thought at some point there would be a new filing for a rate increase. Commissioner Rowe gave the Task Force a copy of the PSC notice on the inquiry, with attached discovery requests, which set forth very aggressive deadlines (Exhibit 7). Commissioner Rowe could not understate the amount of resources expended by NWE, the Consumer Council, and the PSC on the project. This project gathered financial information systematically and then looked at specific remedies. During the remedy phase, questions will be asked about the PSC's authority to order some of the proposed remedies. In addition, questions will be asked about the PSC's authority to order any type of restructuring of a multi-state entity.

Chairman Hines wanted to know what the expected timing was before they would get to the remedy phase and, if NWE filed bankruptcy before they got to the remedy phase, would the PSC be able to continue the investigation. Commissioner Rowe explained they set the first part of schedule out a few months, and it would be later in the year before they would get to remedies. The PSC looked at doing anything it could to move the proposed remedy of creating a separate affiliate as early as possible. There are procedural reasons why they have been unable to do that. Assuming there is a bankruptcy, information the PSC is now obtaining would be valuable in putting out their position before the bankruptcy court. Commissioner Rowe thought it would be possible the proceeding would have to be suspended during the bankruptcy proceeding.

Upon question from Bill Drummond, Commissioner Rowe explained NWE's financial situation could play out either in terms of reduced service quality or higher prices. The PSC is monitoring this quite closely and stated it is a question of whether they are spending the money right now to ensure service quality down the road is being maintained. On the power supply side, gas prices being paid by NWE are the same as gas prices being paid by other utilities. There is concern about getting the gas out of storage and ensuring the gas in storage is available. At this point, they are dealing with long-term contracts with PPL, and Commissioner Rowe does not believe there has been an affect on power supply rates as a result of the bankruptcy. The concerns expressed about the future, however, are very real.

Mike Uda stated NWE is paying the same rate, but is doing so on a shorter turnaround, which is creating a cash flow problem.

(Tape 3; Side A)

Mr. Uda's understanding was that one of NWE's larger contracts expired and because of its credit situation, they were pushed into shorter term credit arrangements. Mr. Uda asked if this problem had been included in the PSC's analysis.

Commissioner Rowe explained that he is concerned good resource opportunities may be lost or that NWE may make decisions based on what is necessary for the corporation rather than what is appropriate for serving default supply.

Mr. Power asked about the core storage numbers and whether those numbers were good, bad, or indifferent. Commissioner Rowe stated those numbers are probably about where they need to be.

Mr. Gates understood current storage is not at the same level as last year, but that is due to third party gas customers having not yet injected gas into storage. Chairman Hines added that he found it interesting that gas prices are declining right now.

Commissioner Rowe stated there is a lot of work being done by the PSC on default, and the PSC has given NWE very strong direction and guidance to reduce the risk. NWE was initially uncertain about the Advisory Committee and how it could be used, but Commissioner Rowe has heard the Advisory Committee is using its own consultant, and there is a lot of good work going on.

Mr. Wheeliham asked about the current default supply contracts. Commissioner Rowe explained the primary source is the two PPL contracts.

Mr. Drummond wondered what elements made Montana a national model for provider of last resort. Commissioner Rowe explained a combination of guidelines to the utilities, procedures that are in place, and directions in place from legislation and the PSC, are a way to achieve multiple objectives, including stability, risk minimization, appropriating development of supply side and demand side, and traditional and nontraditional resources. Montana is a model in terms of the process used to develop those policies.

Chairman Hines purported that in looking at it from an operational standpoint on supply of the product, the best that can be done is to break even. This would put any company in a difficult financial situation.

Commissioner Rowe addressed the bankruptcy and stated it would likely be filed in Delaware and that bankruptcy court is a business court not a consumer court. The PSC, at this point, has the clearest standing to intervene as a party in interest. Consumer groups typically do not have standing to intervene. Commissioner Rowe explained that if someone can get on the

Creditor Committee, they should, since that would enable them to file a reorganization plan earlier and possibly get costs of representation covered. The California Commission is spending \$15 million annually participating in the PGE bankruptcy. Commissioner Rowe thought the goal should be to have a company that is utility focused and Montana focused. Coming out of bankruptcy, there is the possibility of a sale or acquisition. It is also possible a sale could occur directly out of bankruptcy. Commissioner Rowe thought any of those issues could be worked through. The bankruptcy court will approve a financial structure and decide where various costs will go. After the bankruptcy, the reorganized utility will file a case with the PSC asking that the structure be approved. The issues there would be capital structure versus equity, the return and risk associated, and the recovery of prudently incurred expenses. In looking at the ability to be effective in bankruptcy court, one question the bankruptcy court will look at is what kind of authority the PSC has. If the PSC has fewer grants of authority, the bankruptcy court may grant less weight to them. The question now is what do we do to make sure bad things do not happen in the future. The two areas Commissioner Rowe felt the Task Force should discuss are what authority the PSC has over significant transactions involving utility property and what authority the PSC has to adopt "reasonable" interest.

Chairman Hines stated one of the key subjects from his perspective is the role the PSC will have both during and right after the bankruptcy. Chairman Hines is not clear the court would decide a certain allocation of costs, including additional collection of revenues, and that the structure would be the right format. Chairman Hines wondered if the PSC would take that on or whether the PSC would be limited by the bankruptcy restructure.

Commissioner Rowe stated this was a gray area, and ideally a bankruptcy restructure is resolved through consent and negotiation, and he does not know how Consumer Council and the PSC would participate in those negotiations. Commissioner Rowe stated it is not unprecedented that an entity could be both a negotiating party and have to make a decision. The other question is to what extent does the bankruptcy court decision trump state law. Commissioner Rowe stated there is disagreement on this point. In Montana there is a statute that says when the PSC sets costs for rate base purposes, it uses the original cost of the property minus depreciation. There is an exception to that which may or may not apply. Do you look at just the risk of utility operation or the risk of the corporation? Commissioner Rowe stated there are significant issues relating to consumer protection which will need to be addressed.

Mr. Uda asked Commissioner Rowe if the PSC is considering hiring outside experts to do a reorganization plan. Commissioner Rowe thought that would be useful and stated they have discussed this.

Mr. Swysgood reviewed Exhibit 7 and Order 6474A which outlines the things NWE has to do to satisfy the PSC's concerns. Mr. Swysgood was concerned the order could have the potential to drive up rates.

Commissioner Rowe replied that was certainly not the intent. Commissioner Rowe stated it was appropriate for the PSC to be more aggressive and felt the conditions in that Order were consistent with where NWE needed to go, and he thought the corporate management would agree that was where the needed to go.

Mr. Swysgood referred to page 8, paragraph C, and the language stating "Approval of this application requires an ongoing commitment to fully fund comprehensive operation, maintenance, repair and replacement of its public utility infrastructure in Montana," and wondered who determines whether they are fully funded and whether the PSC would have to accept some number and that would satisfy its concerns, and the company could not do that under the given rates they were currently assessed, so they would have to ask the PSC for a rate increase. Commissioner Rowe agreed that was potentially possible. Mr. Swysgood asked if the PSC would be inclined to give that rate increase to meet the requirements of the order. Commissioner Rowe replied the concern raised is that rate-based regulation can trigger the utility spending too much just to boost its return. The PSC was concerned that the ongoing necessary budgets for maintenance and investment in the system not be drained below levels they had been at or levels they should be. This could be framed in terms of acceptable outcomes for consumers in terms of liability, meeting the various national codes and regional requirements. These are performance indicators that a solid utility ought to be able to meet. A revenue requirement case is likely in the next several years regardless of whatever else happens simply because there has not been one in several years. Commissioner Rowe's sense is the appropriate level of expenditures and investment is probably what it has been in recent years because the outcomes have been where they should be. If under current rates the utility is not achieving those objectives and needs to spend more in order to do so efficiently, then that would be appropriate. Commissioner Rowe spoke of small utilities not investing the way they should in an effort to hold rates down and stated that does customers disservice.

- **Power Supplier Issues--David Hoffman, PPLM**

Mr. David Hoffman, Manager of External Affairs, PPL Montana, spoke about power supply and reliability issues. Mr. Hoffman distributed a handout highlighting points of discussion for the Task Force (Exhibit 8). The first point Mr. Hoffman made is that PPL is not obligated to procure power for default supply customers; but rather, NWE is under the obligation to secure power and supply power. Mr. Hoffman stated there is a revenue stream that is guaranteed that could be used to provide a credit-worthy source for supply. Mr. Hoffman thought the Task Force should examine that issue and consider facilitation between NWE and an independent third party

to develop a third-party administrator that would secure a portion of the guaranteed revenue stream to ensure that supply is paid for. Mr. Hoffman's second point was the PPL provides electricity to NWE under the terms of two long-term transactions. Those transactions were with PPL and Duke Energy, and the Duke Energy contract expired July 1, 2003. Mr. Hoffman informed the Task Force that PPL has provided NWE a fraction of its market needs on a daily basis.

Mr. Joel Cook, PPL Montana, stated that on any given day not knowing what NWE's obligations are, they provide a limited amount of power on a daily and hourly basis beyond the long-term contracts. This is done under a WSPP agreement which is the standard contract in the West. This is set up so NWE has provided collateral up to a limit and they will stay at that limit.

Chairman Hines asked Mr. Cook if he had any experience in charging premiums to entities that have poor credit. Mr. Cook replied this premium is quantified a different way, and there are other entities in the West that have different credit terms and contract provisions. There are other utility counterparts that either prepay or have similar arrangements. Chairman Hines added it is a risk reflection and there are different ways to reflect risk by a shorter time period for payment or up-front payment. Another way to mitigate risk is to have a premium attached to what you would normally sell a unit of power. Mr. Cook did not view the premium concept as a very good mechanism since regardless of the price, if you do not get paid, it will not matter.

Mr. Uda asked if this was a risk management tool, and Mr. Cook replied it was credit management tool, but could be referred to as part of their risk management activities. Mr. Cook could not give an exact percentage because he had no idea what NWE's loads are in a given hour and only knows what they are selling to NWE.

Mr. Hoffman continued reviewing Exhibit 8 and NWE's potential financial failure. Mr. Hoffman stated that a credit rating firm notified PPL Montana that it was under a two-week watch for possible credit downgrade, and the principal reason cited for that notice was NWE's financial condition as a large customer of PPL Montana. Mr. Hoffman stated his responses to the potential bankruptcy filing are purely hypothetical since a filing has not yet taken place. Mr. Hoffman pointed out PPL's contract with NWE is an industry standard contract and gives PPL the right to cancel the contract in the event NWE files for bankruptcy. At this time, and assuming NWE stays current with its payments, PPL sees no reason to seek termination of the contract. In the event bankruptcy does occur, PPL will attempt to work with NWE. PPL has the right to seek adequate collateral or a cash deposit to secure continued payment by NWE for energy supplied by PPL. NWE now pays its bills on a weekly basis rather than an 30-day basis. NWE is current on it's payments. Mr. Hoffman added it would be unlikely and unwise, given the various contract prices they have with NWE and the current market conditions, that NWE will try to avoid its contracts. Mr. Hoffman testified PPL does not believe residents of Montana will lose their

electricity supply, as they would continue to operate and put power into the grid system and market their electricity to other entities in the region. NWE would still be under its obligation to obtain its default supply needs from the market, although it is likely it would be at a higher price.

Regarding the pre-bankruptcy nonpayment scenario, PPL hopes NWE will make its payments under the supply contract an absolute priority given the favorable terms. Mr. Hoffman felt it would be irresponsible and premature to say what PPL would do in exercising its rights under the contracts. Mr. Hoffman noted there are a variety of remedies available, including suspension of delivery. Given the physics of the grid system, the lights would stay on. PPL's plans are to continue to operate and supply electricity into the grid system.

Mr. Power asked Mr. Hoffman if he was aware of any other utility or default supply arrangement where the rates that customers are paying for energy supply is somehow flowing to a third party to secure the purchase of electricity or natural gas.

(Tape 3; Side B)

Mr. Power stated it sounds like a straightforward institutional arrangement to make sure cash flow is available to adequately fund the electricity or natural gas customers want, but he was wondering if there were any examples of whether things have actually been structured that way. Mr. Hoffman replied he could not cite the Task Force to a specific example, although he thought there may be some comparisons, but nothing exactly in the same context as what Mr. Power was suggesting. Mr. Cook spoke about comparison with California and the utilities that had credit issues.

Commissioner Rowe stated the problem is there may be a mismatch when you are purchasing and when you are being paid, particularly on the gas side and a company is trying to get gas into storage. Commissioner Rowe thought Mr. Hoffman made two very important points when he stated it is extremely unlikely these contracts would be at risk since the goal of reorganization is to preserve the value of the system. The second point was that not only could the debtor try to avoid a contract in bankruptcy, but the other contracting party could as well.

Mr. Power's impression was that crucial suppliers have inputs into a company that has filed for reorganization and that part of the intent of bankruptcy law was to protect those companies from being cutoff from their major suppliers. Mr. Power wondered if the bankruptcy court could intervene to keep PPL from exercising its rights under the contract. Mr. Hoffman thought the bankruptcy court has plenary powers.

Mr. Uda asked if PPL had looked at what type of structure might work, and Mr. Hoffman replied PPL has no specific plans but has had conversations with NWE.

- **Emergency Powers--Greg Petesch, Legislative Legal Services**

Mr. Greg Petesch submitted two documents to the Task Force containing past analyses of emergency and disaster provisions. The first letter contained an analysis of Title 10 that Mr. Petesch performed for Senator Bruce Crippen in August 2000 (Exhibit 9), and the other was an analysis of the energy emergency powers of the Governor under Title 90 and was done at the request of then-Representative Dan McGee in June 2001 (Exhibit 10). Mr. Petesch explained the definition of disaster contained in the letter to Senator Crippen has since been updated to include incidents involving bioterrorism and weapons of mass destruction and the statutory appropriation that the Governor has access to in the event of an emergency has been increased from \$12 million to \$16 million. The energy emergency powers to the Governor were enacted in 1979 and during that time the energy emergency was the price and availability of gasoline. The definition of energy within that act includes both natural gas and electricity, so it would apply to the current situation. Mr. Petesch explained there are two pieces of the emergency authority of the Governor. The first is an energy supply alert, which is a condition of energy supply on a national, regional, state, or local basis that perceivably will result in a significant effect on the availability of an essential energy supply or the price of energy within the ensuing 90-day period. Under that authority, the Governor's ability is for 90 days, and the Governor has the authority to direct state agencies and political subdivisions to reduce energy consumption, conserve energy, or recover energy through any available means they have, or action can be taken to increase the supply of energy. Declaration of an energy emergency is defined as an existing or eminent domestic, regional, or national shortage of energy, or price of energy that will result in the curtailment of essential services, or the production of essential goods within the state, or the disruption of significant sectors of the economy unless action is taken to conserve or limit energy to allocate the available energy in a different way, or to increase the available supply of energy. The emergency powers of the Governor under energy emergency, to the best of Mr. Petesch's knowledge, have never been implemented. Therefore, there are questions that are not unresolved under a normal declaration of emergency for fire and flood. Mr. Petesch stated the Governor's powers are more broad under the energy emergency provisions because they deal with a different type of situation. The Governor's declaration of an energy emergency is effective for 90 consecutive days and can only be extended by the Legislature. After declaring an energy emergency, the Governor would have the ability to implement programs, controls, standards, priorities, and quotas for production, allocation, conservation, and consumption of energies, including plans for the curtailment of the usage of energy. Those apply not just to governmental entities, as does the energy supply alert, but to all sectors of the state. The Governor also has authority to allocate energy to regions that may need it. The Governor also has the ability to suspend regulatory statutes under the declaration of an emergency. This provision is under the general declaration of emergency powers. The energy emergency powers also specifically state the Governor has the authority to modify existing pollution control standards and requirements and other standards or requirements

that affect the use of energy including air and water pollution. In order to increase the supply of energy, the Governor would also have the authority to suspend the application of the Montana Environmental Protection Act. This would include the necessity of an Environmental Impact Statement prior to an energy supply increase project being commenced. Statutes also provide a project commenced during the declaration of an energy emergency may proceed to culmination even after the culmination of the period of the emergency. Any person specifically ordered to comply with an order issued pursuant to the energy emergency authority of the Governor is required to comply notwithstanding any other provision of law or contract. Mr. Petesch stated there are a lot of legal issues implicated by this provision. Mr. Petesch stated he had noted in his letter to Representative McGee that he did not find it unlikely that if some of these powers were implemented, the courts would become rapidly involved. The statute also provides the Governor can order a distributor to take any action on the Governor's behalf to implement orders. A distributor is a broad definition and includes the activities of generating, producing, transmitting, or distributing energy. Therefore, it would apply to everyone within the chain of energy supply. The Governor could also order that the energy be supplied at a price that does not constitute a taking. Therefore, the person who is ordered to supply the energy has to at least be made whole. Mr. Petesch explained the tie between the two types of emergency declarations is that the energy emergency powers are supplemental to the Title 10 normal disaster and emergency statutes, so once an energy emergency was declared, the Governor would have access to the statutory appropriation of the \$16 million for meeting emergencies under Title 10. Mr. Petesch closed by stating the energy emergency provisions have never been implemented, but they are there, and they are very broad.

Mr. Drummond verified the penalty for noncompliance with the Governor's emergency order was the ability of the state to take the assets. Mr. Petesch replied the statutory penalty for noncompliance is a misdemeanor, and each succeeding day would be another misdemeanor, and the penalty would be a \$500 fine and the threat of six months in jail upon conviction. The Governor could order someone to provide the energy at a price that would not be considered a taking and order it be provided to certain entities.

Commissioner Rowe asked Mr. Petesch his opinion on whether state law would allow the Governor to order a producer in the interstate market under FERC jurisdiction to sell at a price that would not be so low as to be considered a taking. Mr. Petesch replied the statute makes no distinction between providers as long as the energy is being generated in-state. Absent federal intervention, Mr. Petesch believed the statute would give the Governor the authority to order the generator to continue to provide energy under the contract with the state being the payor if the distributor or purchaser did not have the financial capability of making the payment.

Commissioner Rowe asked if there was an advantage to a provider of having the Governor invoke this power and a greater likelihood of payment. Mr. Petesch stated that was a difficult question to answer because there would also be risks involved since the Governor could then order the power be supplied at any price that is not a taking. This price could be substantially lower than the market price.

Mr. Drummond asked about federal generation in the state and whether the Governor could tell the federal government to deliver power generated in-state. Mr. Petesch replied we would be preempted from seizing federal assets.

Mr. Power stated he was sure \$16 million would not go very far in dealing with stored gas owned by a third party because a pre-bankrupt utility might not be able to pay for it.

Mr. Petesch explained \$16 million is the upper limit the Governor can expend, but it is a rolling \$16 million and as repayments are made to the General Fund from the expenditures, the amount recovered is reinstated into the \$16 million cap.

Mr. Power suggested someone should do a calculation to see if the authority could be implemented for any period of time and determine the effectiveness of the authority. Chairman Hines suggested using the burn rate per day and then using a couple of extreme weather days. Chairman Hines also thought the Task Force should have an understanding of the cash flow coming back in, so it could look at the recycling issue. Mr. Power also thought reference to "not be a taking" may be subject to legal interpretation and case law.

Commissioner Rowe asked if it would be more realistic to use emergency funds not to purchase, but rather to secure the purchase. Mr. Petesch thought if the conditions warranting the declaration of an emergency were met, the Governor has the authority to secure a supply of energy and, if that were in the form of a security agreement, it would be within the scope of securing a supply of energy.

Mr. Uda asked whether the procedure under Title 90 was the same as Title 10. Mr. Petesch explained the definitions are different, but is an executive order with the finding these conditions are met. The distinction is that an emergency declaration under Title 10 is for 30 days, unless extended by legislative action or presidential action, whereas an energy emergency is for 90 days and can only be extended by the Legislature.

Mr. Swysgood reflected the Task Force does not know how many megawatts are used during a day for total consumption by the state, but calculated it would be about \$4 million for a week. This does not take into account the amount that would be flowing back in from customers.

Chairman Hines was curious whether the Governor has any opportunity to push into a bankruptcy. Mr. Petesch thought it would be difficult for that scenario to play out because in order to declare the emergency, there would have to be a finding of a threat to the supply of energy, and it would seem the threat to the supply would be the people generating the electricity were threatening to break the contract with the distributor.

Chairman Hines clarified his question stating if there was an event where there was not a supply of electricity and the Governor invoked emergency powers, given the fact there is only a one-day or two-day ability to prepay an energy supplier and the company was not in bankruptcy, we would lose our ability to assure a supply and reasonable price for electricity and gas product. Under those conditions, Chairman Hines wanted to know if the Governor would be able to take the next step. Chairman Hines was assuming under a bankruptcy proceeding, those contracts could be put back in operation. Mr. Petesch thought the Governor could order people to supply in spite of an existing contract, but thought a more likely scenario would be that the Governor would enforce the contracts and the state would step into the shoes of the buyer.

Mr. Power thought the whole matter needed to be thought through more carefully. The law does not say a utility's revenue can be confiscated to make sure the General Fund is reimbursed. Mr. Power thought the Governor has the power to intercept the electrons or natural gas, but not necessarily the dollars. Mr. Power felt it would be nice to know that the numbers in the law would enough to serve a real energy emergency in the state.

Mr. Beaudry commented that he assumed the state would only be intercepting the revenue flows generated within the state and not out-of-state sales. In addition, he thought a creditor may have something to say about Montana confiscating some of the money, and reminded the Task Force there are other players in the game.

Mr. Uda commented the FERC preemption issue will play out irrespective of whether the sales are in state or out of state, and the position the generating companies would take is that they are FERC jurisdictional sales, and the State of Montana does not have any authority over it. Mr. Uda was suggesting that in the short-term, pre-bankruptcy, that if there was a declaration of emergency, it may be advantageous to know the state is backstopping the payment.

Chairman Hines asked Mr. Uda if he would give the Task Force a brief presentation on the FERC preemption at the next meeting. Mr. Uda agreed he would prepare a presentation.

Mr. Swysgood commented it would be the period of time of uncertainty before a bankruptcy filing that a supplier may become itchy about payment. Mr. Swysgood thought the idea of a the threat being out there would be enough to keep power flowing. Chairman Hines responded that his concern is that if this is a half-day intervening period, there is enough funding;

but, if the suppliers get itchy a week or two prior to a declaration of bankruptcy, that is quite a gap.

Mr. Uda found it interesting that the system was going to stay in tact and there will not be a disruption in the delivery system. Mr. Uda was skeptical as to whether that was true, but he found it reassuring.

Chairman Hines thought there had to be two conditions: one being the electrons have to continue to be generated; and two, the switches have to remain open. If either of those conditions is not met, then the power would not keep flowing. Mr. Uda agreed, but thought he heard differently.

Mr. Swysgood asked the Task Force to remember if the Governor declared an emergency, the \$16 million would still have to be there. The money could have been expended on fire fighting for example and not yet replenished.

(Tape 4: Side A)

Consumer Protection Issues if Bankruptcy Occurs

- **Al Brogan, PSC Staff Attorney**

Mr. Al Brogan, an attorney employed by the PSC, gave an overview on Bankruptcy and its relationship with NWE and its consumers. Mr. Brogan stated he has expended a considerable amount of time researching these issues over the past couple of months. Mr. Brogan gave a disclaimer to his presentation that the opinions presented were his own and not necessarily those of the PSC. Mr. Brogan submitted his written presentation (Exhibit 11). Mr. Brogan covered bankruptcy basics, recent electric and gas utility bankruptcies, participants, jurisdictional conflicts, and inherent uncertainties. Chapter 7 (liquidation) and Chapter 11 (reorganization) bankruptcies are the two Mr. Brogan focused on. Generally, in a Chapter 11 bankruptcy, the current managers continue to operate the business as a debtor in possession (Trustee). The duty of Trustee is to maximize the return of the assets to the creditors and equity holders. A party of interest or creditor can seek to have a filing converted to a Chapter 7 if they can show it is in the best interest of the creditors.

Upon question from Chairman Hines, Mr. Brogan explained this can be done by any one creditor making a motion before the bankruptcy court. At that point, other creditors, the debtor, and other interested parties would weigh in with briefing and arguments. At that point, it would be up to the court to decide.

The two goals of a Chapter 11 bankruptcy are that a financially sound organization emerges and all creditors are treated consistently and equally. There is considerable research indicating a high number of entities reorganized in Chapter 11 bankruptcy actually fail. Mr. Brogan felt this happens because the root of the initial problem was not addressed. Neither of these two goals is viewed more importantly than the other.

Chairman Hines asked if an unsecured creditor is treated the same as a secured creditor under Chapter 11. Mr. Brogan stated even unsecured creditors are treated differently according to various criteria. Mr. Uda commented that within the class, the goal is to treat the creditors the same.

Mr. Brogan informed the Task Force that at the onset of a bankruptcy filing, an automatic stay is issued to prohibit any actions taken against the debtor by all entities. Creditors can ask for relief from an automatic stay and, if they show proper reason, a court will grant them relief. In addition, there are exceptions for governmental units which states the commencement of an action to enforce, police, or regulatory powers, that does not seek to enforce a money judgment, are not barred by the automatic stay. Therefore, Mr. Brogan's opinion is the investigation ordered by the PSC can continue despite NWE's bankruptcy filing. The bankruptcy estate is the pie used to pay creditors and includes everything the debtor has at the time of filing. This will apply first to preferences of the debtor that were paid within 90 days of filing. The Trustee will also attempt to get payments made to insiders within the past year. The Trustee can also attempt to bring property back into the estate that has been transferred out. If there is an executory contract that still needs to be fulfilled by both parties, the debtor can ask the court for permission to reject the contract. Conceivably, in the case of NWE, NWE could ask the court for permission to reject the PPL contract.

Mr. Swysgood asked about corporate taxes that are due and property taxes. Mr. Brogan replied if they are property taxes not yet paid, there would be nothing to bring back in. If they are property taxes that have been paid within the 90 days of filing, they are subject to avoidance powers, and the debtor could seek to bring the money back in.

In addressing priority of claims, Mr. Brogan explained secured creditors will get what is owed them to the extent that they are a secured creditor. If they are under secured, they are first in line. Next in line are priority unsecured claims, and the most important of those are administrative expenses, including attorneys' fees, consultant fees, employees, and post-petition expenses of running the business. Therefore, power supplied to NWE after they filed for bankruptcy will receive priority over unsecured creditors. Income received after the filing will be available to pay those expenses before it will pay the prior unsecured creditors.

Mr. Beaudry asked if the revenue stream would be used to pay secured creditors before it pays for ongoing supplies. Mr. Brogan replied generally that would not happen because they are only secured to the value of their assets. Other priorities include certain wages, unsecured debt, certain employee benefits, deposits for goods and services not yet rendered, payments for income taxes and property taxes, and then general unsecured claims, and lastly equity holders.

Chairman Hines asked if the state was owed property taxes, whether they would be a creditor at the table. Mr. Brogan was unsure whether the counties or the state would be the creditor; however, the state would be a creditor if corporate taxes were owed.

Rep. Olson asked whether any successor to NWE would also take the default supply obligation and how that would fit into a Chapter 7 bankruptcy. Mr. Brogan offered to research the issue before providing an answer to Rep. Olson.

The plan of reorganization will classify all the creditors, and each class will be provided an opportunity to vote on the plan, and the plan can be forced on a dissenting class.

Chairman Hines reminded Mr. Brogan of the time constraints facing the Task Force and invited Mr. Brogan to come back with a more detailed presentation. Commissioner Rowe stated Mr. Brogan's detailed outline can be accessed on the PSC web page.

Mr. Brogan continued stating there have been many gas and electric utility bankruptcies and in none of those cases did the lights go out or the furnaces go off. One of the things learned from these bankruptcies is the bankruptcy court has a lot of power and there are a lot of uncertainties. In addition the process can be very time consuming and expensive and, for the most part, the rules favor the largest creditors. Mr. Brogan closed by saying there are only three sources of funds, unsecured and under secured creditors, shareholders, and ratepayers. Ratepayers are not necessarily worse off. Mr. Brogan added if the PSC participates, it will be a party in interest not a creditor, but the state might be a creditor. The state then have certain powers the party-in-interest would not. Mr. Brogan spoke about two recent utility bankruptcies filings. One of those, NRG Power Marketing, asked the bankruptcy court to reject a power supply contract it had with Connecticut Light and Power. Connecticut Light and Power asked FERC to issue an injunction and FERC issued an order. The matter is now before the Circuit Court of Appeals in the DC Circuit. The contracts expire on December 31, 2003, so Mr. Brogan feels the issue will become moot before it is decided. In the second case, an injunction was requested from the bankruptcy court to keep FERC from telling them what to do. The bankruptcy court then issued a temporary restraining order against FERC. It is suspected the order will become permanent and FERC will appeal. Mr. Brogan believes the PSC retains its authority over rates during a bankruptcy, and that the court cannot set rates. He also believes the PSC does not have authority to approve or disapprove transactions that take place in relationship

to the plan of reorganization. Mr. Brogan also believes the PSC probably has limited authority to review the prudence of actions taken pursuant to a bankruptcy court's rulings or orders. Mr. Brogan feels the regulatory agency should take a very proactive role in the proceeding.

Chairman Hines asked if the bankruptcy court can allocate debt and whether the PSC will set rates to ensure that debt is covered. Mr. Brogan feels there will be litigation in this area and spoke about the Westar case in Kansas where the Kansas Commission was very active in getting debt allocated properly. Mr. Brogan stated once the bankruptcy court allocates debt to an ongoing utility entity, the Commission's review of that debt will be restricted. Chairman Hines stated that is the "10,000-pound gorilla" as far as he is concerned, and requested Mr. Brogan to address the issue at a future meeting.

Mr. Brogan closed stating there are a lot of uncertainties surrounding utility bankruptcies, especially regulated agency bankruptcies, and the law has not been fully developed. Most of the cases have eventually been settled by agreement. There are no absolutes about what can happen, and the impact on ratepayers is unknown.

- **Ross Richardson**

Mr. Ross Richardson is a private attorney in Butte, Montana, who performs rate work for NWE and devotes a substantial share of his practice to bankruptcy. Bankruptcy is very complex, and there are not any concrete answers, particularly in Chapter 11 cases. Chapter 11 filings are the only ones where creditors get to vote on the outcome of the case. Mr. Richardson felt there is a very real incentive for the debtor to communicate with creditors. In the case of a utility bankruptcy, everyone has the same goal—to see a solid, healthy, and viable entity emerge from the bankruptcy. The quickest any utility has emerged out of bankruptcy is approximately 27 months. Therefore, it is in everyone's best interest to get together with the debtor and work things out. Mr. Richardson expounded on Mr. Hoffman's statement that the PPL contract can be canceled or it is a condition of default if NWE files bankruptcy. Mr. Richardson stated these types of provisions are not unusual in contracts and are routinely held to be invalid by bankruptcy courts. In addressing post-petition creditors, Mr. Richardson explained those creditors are in a unique position because the unsecured debt is not being paid by means of the stay, so there is money available to pay these creditors on an ongoing basis. If they are not paid, they are given the status of administrative expense, which is the highest level, and they are the first ones paid back in any bankruptcy case. In the event of a utility bankruptcy, Mr. Richardson felt they would be looking at a reorganization where the lights would not go out and the gas would continue to flow, and the utility would want to come out as a viable and strong financial entity. There are no concrete answers to how much authority the PSC will have in the bankruptcy proceeding. Property taxes are secured by statute in Montana, so any entity that is owed taxes will be a secured creditor and will have priority over creditors. Mr. Richardson felt any payments made to a secured creditor

would not be preferenced. Generally speaking, the utility should remain as it was before bankruptcy, will continue business as usual, and try to restructure its debts.

Rep. Olson stated taxes are secured by statute and wondered if the default supply obligation would remain with the poles and wires because of statutory obligations. Rep. Olson did not know if the default supply was a secured creditor, but stated the law says any successor to NWE would retain the obligation to supply default supply energy to the NWE customers. Mr. Richardson responded that as a practical matter, that would be resolved within any sale of the assets within the context of the bankruptcy court.

Chairman Hines questioned whether a creditor would have to raise that issue or whether a party in interest could raise the issue. Mr. Richardson replied an interested party should raise the issue when assets are being sold, but reminded Chairman Hines that assets are not sold under a reorganization.

Regarding property taxes, Mr. Swysgood said local government, school districts, and the state are recipients of property taxes, and wondered if the state could represent the other two entities. Mr. Richardson responded he has seen that done in the past.

Commissioner Rowe stated it was his understanding the Attorney General does not represent municipal local governments, so it is more likely they would have to organize their own representation. Mr. Richardson replied that also was his understanding, but they could get together and have one person represent both interests.

(Tape 4; Side B)

- **Task Force Discussion**

Mr. Bushnell highlighted three possible areas where subcommittees could be formed. Mr. Bushnell suggested forming subcommittees to address the Governor's emergency powers, the bankruptcy, and PSC long-term issues which would clarify the PSC's authorities and role. Chairman Hines thought a consistent theme is that if NWE proceeds with bankruptcy, a plan will need to be put forward before and during the bankruptcy proceeding. This will require an agreement on where the Task Force wants to end up. Chairman Hines suggested keeping this in mind when identifying issues which need to be resolved in order to get agreement on outcomes that would be most beneficial to the ratepayers of Montana.

Commissioner Rowe suggested there are some issues being worked pretty well in other places. Commissioner Rowe felt emergency power is an appropriate issue. Reliability issues and short-term portfolio issues are important and are being worked pretty hard in other forums, but

Commissioner Rowe welcomes input from the Task Force. Bankruptcy-related issues are critical and work is being done in other parts of state government. Director Swysgood is leading the effort to identify the potential interests of the wide range of state agencies in the event of a bankruptcy. Longer-term issues are questions about what kind of authority would be appropriate coming out of bankruptcy. Ideally, those issues would be addressed going into a bankruptcy because they could affect the strength of your position once you are in bankruptcy court.

Chairman Hines remembered Commissioner Rowe stating the structural aspect is important, and he thought going into a bankruptcy, it would be somewhat helpful to know how you would want the entity to look when it emerges. Chairman Hines thought a group should look at this in greater detail and decide what attributes it would like the utility to have and what would be most beneficial to Montana consumers.

Mr. Power wondered if this would duplicate work already underway by the PSC. Commissioner Rowe thought the work would compliment that being done by the PSC and stated he would be interested in knowing what the other members of the Task Force think a solid utility operation should look like. Mr. Power thought the Task Force is not likely to come up with a reorganization plan for the state, but rather a suggestion as to the structure of the characteristics, and that suggestion would dovetail with the PSC's role.

Mr. Swysgood insisted in the event of a bankruptcy, the only person who could direct the outcome of the bankruptcy at all would be someone with a seat at the table.

Mr. Uda asked if under the heading of consumer protection issues in the event of bankruptcy, that the Task Force did not really need to worry about the state as a creditor, but would like input on identifying state's interests and goals. Mr. Uda was unclear what the PSC would like to see the Task Force do. Commissioner Rowe responded there are two sets of issues in a bankruptcy that are of concern to the state. The first is the potential obligations to all the agencies, and the second is to utility operation and consumers. The PSC has standing to address those issues and would argue the Consumer Council also has standing, although consumer groups are not usually allowed to intervene in bankruptcy proceedings. Commissioner Rowe did not think the Task Force would want to address the weaves of all the financial concerns and capital structure. Commissioner Rowe felt that what the utility should look like emerging from bankruptcy would be very valuable and parallels issues being looked at by Representative Olson's Committee as well. (See Exhibit 12.) Another issue the Task Force should address is what kind of authority the PSC needs to deal with things such as major utility transactions.

Chairman Hines agreed the characteristics of the utility would be one area, but also the PSC's responsibilities and roles, which would include the default supply. Chairman Hines was specifically referring to post-bankruptcy.

Mr. Uda views post-bankruptcy as being after the filing, the process of the bankruptcy, and then long-term into the future after the bankruptcy is over. Chairman Hines stated two Legislative Sessions will most likely occur before the bankruptcy is over and a substantial amount of policy is likely to occur during that time period.

Mr. Uda stated he is not very clear on where the members are on what the Task Force is supposed to be doing. He felt Commissioner Rowe was saying not to get too much involved in the bankruptcy per se, but rather just look at the structure of the utility and what it should look like coming out of the bankruptcy. Commissioner Rowe responded if the Task Force attempts to go too deep into the bankruptcy, it will not get much else accomplished. Mr. Uda was not sure that was consistent with consumer protection issues as part of the bankruptcy. Mr. Uda felt consumer protection issues and utility structure are interrelated, but are not exactly the same.

Commissioner Hines felt activities such as portfolio development and preapproval could certainly be within the purview, but taking a position on what the capital allocation should be would be beyond what the Task Force should do. Mr. Uda was not making that suggestion, but commented consumer protection is consistent with discussion of utility structure. Mr. Uda understood that the Task Force should be driven by consumer protection.

Mr. Power stated the Task Force would decide what characteristics it would like to see in whatever utility emerges from bankruptcy, but would be looking at it from the point of view of consumers' well being. Mr. Power did not believe the Task Force had any handles on what is going on in the bankruptcy proceeding, noting even the state as a creditor will not know until the reorganization plan emerges.

Mr. Bushnell suggested two subcommittees. The first would be on the structure of the utility and characteristics of the utility coming out of bankruptcy, which would include the default supply obligation and the authority and role of the PSC. Mike Uda, Bill Drummond, Tom Power, Alan Olson, Bob Rowe, and John Hines will serve on the structure subcommittee, and John Bushnell will staff the subcommittee. The second subcommittee will be on the Governor's emergency powers. One question this subcommittee will address is what is the exposure on an average day in an effort to determine how far \$16 million will go, and whether there is some authority to enforce without having to pony-up money. Mr. Uda thought the subcommittee should also consider strategy issues. Chuck Swysgood and Haley Beaudry will make up the emergency powers subcommittee.

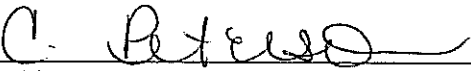
There being no further business to come before the Task Force, the meeting was adjourned at 4:20.

APPROVED AS TO FORM AND CONTENT:

By: _____
John Hines, Chairman

TRANSCRIPTION CERTIFICATION

I, Cynthia A. Peterson, residing in Helena, Montana, do hereby certify that the foregoing pages constitute a true and accurate transcription, to the best of my ability, of audio cassette Nos. 1-4 of the September 12, 2003, meeting of the Governor's Consumer Energy Protection Task Force.



Cynthia A. Peterson, PLS